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No. 130

Supreme Court of the United States

OCTOBER TERM, 1964

RAILWAY LABOR EXECUTIVES' ASS'N, ET AL., *Appellants*,

v.

UNITED STATES, *Appellee*,

and

INTERSTATE COMMERCE COMMISSION, SOUTHERN RAILWAY COMPANY, and CENTRAL OF GEORGIA RAILWAY COMPANY, *Intervenors-Appellees*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

RESPONSE TO REQUEST OF APPELLANTS FOR LEAVE TO WITHDRAW FROM THEIR APPEAL THEIR THIRD QUESTION PRESENTED

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November 10, 1964

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At page 4 of their Reply Brief to the Motions to Affirm and to Defer appellants have asked leave of this Court to withdraw from their appeal the third question presented by their appeal. Intervenor-appellees Southern and Central submit this Response to appellants' request pursuant to this Court's direction of October 12, 1964.

Appellants' third question, it will be recalled, relates to their claim that the Interstate Commerce Commission was obligated by Section 5 (2) (f) of the Interstate Commerce Act, 49 U.S.C. § 5 (2) (f), to provide protection for employees affected by internal technological improvements occurring after Southern acquired stock control of Central (J.S. 5). The District Court upheld the Commission's orders in this respect (J.S. 7a-8a). The United States and the Commission have joined Southern and Central in defending this holding on appeal (U.S. Memo. 18-20; I.C.C. M.A. 23-25; Reply Memo. of Southern and Central 11-13).

The granting of appellants' request to withdraw the third question presented will have the effect of making the decision of the court below on that question final and conclusive as between the parties for all purposes in this litigation. For that reason Southern and Central make no objection to appellants' request for leave to withdraw that question from the appeal.

Southern and Central also wish respectfully to renew their request that consideration of this appeal—or of questions 1 and 2 if question 3 is permitted to be withdrawn—be deferred pending disposition in the court below of *Southern Ry.* v. *United States*, C.A. 3276, E.D.

Va. Proceedings in that suit were stayed on September 10, 1964, over the railroads' objection, pending decision by this Court herein. We continue to believe, however, that this Court's decision will be materially aided if the whole case, including the Commission's order of February 17, 1964, is before it. If this Court agrees and grants the Motion to Defer, the court below will no doubt vacate its order and proceed to dispose of C.A. 3276.

Respectfully submitted,

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